THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 29323 OF 1997
AND
WRIT PETITION NO. 24259 OF 1999

WRIT PETITION NO. 29323 OF 1997:

Date: 23.04.2007

Between:

Hanmantha Rao.

... Petitioner.

And

The Industrial Tribunal-I, rep., by its Presiding Officer, Chandravihar Buildings, Ist Floor, M.J. Road, Hyderabad and another.

...

Respondents.

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 29323 OF 1997
AND
WRIT PETITION NO. 24259 OF 1999

COMMON ORDER:

Both the Development Officer of Oriental Insurance Company Limited and the company have approached this Court, aggrieved by the award of the Industrial Tribunal-I, Hyderabad in I.D. No. 13 of 1993 dated 18.01.1997. While the Development Officer filed W.P. No. 29323 of 1997, the Oriental Insurance Company Limited filed W.P. No. 24259 of 1999. Parties shall hereinafter be referred to as they are arrayed in W.P. NO. 29323 of 1997. The Industrial Tribunal in its award, while holding that the reference was not maintainable, however directed payment of compensation of three years salary to the petitioner.

The petitioner-Development Officer was removed from service, by order dated 28.11.1990, pursuant to a departmental enquiry held to enquire into the allegations that he had issued eight cover notes with ante dates, in collusion with private parties, after a fire accident which took place on 15.08.1994. On a dispute being raised the Government, vide order dated 16.02.1993, referred the following dispute for adjudication to the Industrial Tribunal-I, Hyderabad:-

> "Whether the action of the management of Oriental Insurance Co. Ltd in removing Sri K. Hanumantha Rao, Ex-Inspector, from service is justified? If not to what relief Sri K. Hanumantha Rao is entitled to?"

The Industrial Tribunal framed two points for consideration. 1). Whether the petitioner was a workman within the meaning of Section 2(s) of the Industrial Disputes Act? and 2). Whether the

respondent was justified in removing the petitioner from service?

On point No.1, the Tribunal noted that the petitioner was appointed as an Inspector in the respondent company during 1980, under Ex.M-17 order dated 04.02.1980, that the post of Inspector was re-designated as Development Officer in the year 1987 by Ex.M-18 dated 13.02.1987, that the duties and functions of an Inspector were enumerated in clause 8 of Ex.M-17 appointment order on which the petitioner signed, that Schedule 'A', which was attached to Ex.M-17 contained the functions of Inspectors, that the main functions of an Inspector/Development Officer were enumerated by the Senior Divisional Manager (M.W-2), in his deposition, to include, recommend and recruit agents, assist and train them, co-ordinate procurement of general insurance business, service them in the area of their jurisdiction and issue cover notes and katcha receipts on receipt of premium from the insurer. The Tribunal noted that, as per the guidelines given by the Management, Development Officers had to carry on general insurance business, that they were required to maintain a diary keeping a record of the business procured by them and to produce the same as and when called for. The Tribunal noted that these functions of a Development Officer were admitted by the petitioner also, that the main duty of an Inspector was to collect the premium, issue cover notes to the parties and send the premiums as well as the cover notes to the Branch Office and that he was also required to canvas business for the company. After noting the contention of the petitioner that he was doing clerical work, in writing the cover notes, that he was a workman and the contention

of the respondents that the petitioner was not a workman as he did not attend to manual, skilled, unskilled, technical, operational and supervisory work, the Tribunal extracted the definition of "Workman" under Section 2(s) of the Industrial Disputes Act. The Tribunal, thereafter, referred to several judgments of the Supreme Court to hold that it was not the designation but the nature of duties which were relevant to determine whether a particular employee was a workman or not within the meaning of Section 2(s) of the Industrial Disputes Act. The Tribunal also noted that the judgment in **S.K. Verma Vs. Mahesh Chandra**[1], wherein the Supreme Court had held that the Development Officers of L.I.C. of India were workmen within the meaning of Section 2(s) of the Industrial Disputes Act, had been held to be perincuriam in **H.R. Adyanthaya Vs. Sandoz (India) Ltd**[2]. After extensively referring to the judgment of the Constitution Bench, the **Sandoz (India) Ltd**[2], the Tribunal held that the judgment in **S.K. Verma**[1], to the effect that the Development Officers of LIC were workmen, was not a judicial precedent required to be followed. The Tribunal held that the duties of Development Officers of the L.I.C. and the Development Officers in Oriental Insurance Company were identical, that the work done by the petitioner could not be manual, unskilled, skilled, technical, operational clerical or supervisory work and, while he may be canvassing the business of the respondent insurance company, he could not be said to be a sales promotion employee and, therefore, the petitioner was not a workman within the meaning of Section 2(s) of the Industrial Disputes Act.

It is necessary to note that, while **S.K. Verma**[1] dealt with Development Officers of L.I.C, **Sandoz (India) Ltd**[2], wherein the judgment in **S.K. Verma**[1] was held to be perincuriam, did not relate to Development Officers of the L.I.C. and, while the Tribunal was justified in holding that no reliance could be placed on **S.K. Verma**[1], in view of its being held perincuriam in **Sandoz (India) Ltd**[2], no reliance could be placed on **Sandoz (India) Ltd**[2], to hold that all Development Officers in L.I.C., or Oriental Insurance Company, were not workmen. The Tribunal was required to examine and analyse the evidence on record and thereafter record reasons in support of its conclusion that the petitioner was not a workman within the meaning of Section 2(s) of the Industrial Disputes Act. The mere fact that **S.K. Verma**[1] was held preincuriam in **Sandoz (India) Ltd**[2] did not automatically render all Development Officers, either of L.I.C. or of Oriental India Insurance Company, not to be workmen within the meaning of Section 2(s) of the Industrial Disputes Act and, as the Tribunal itself had noted in the earlier portion of the award, the nature of duties, and not the designation/ nomenclature, was the relevant criteria to determine whether a particular employee was a workman or not. It is also necessary to note that, in **Sandoz (India) Ltd**[2], the Supreme Court held that for a person to come within the definition of a workman under Section 2(s) of the I.D. Act, he must be employed to do the work of any of the categories i.e., manual, unskilled, skilled, technical, operational, clerical or supervisory work and it was not enough that he was not covered

by any of the four exceptions to the definition of "Workman" under Section 2(s) of the Industrial Disputes Act. The Tribunal was, therefore, required to examine, on the basis of the evidence on record, as to whether the petitioner was doing any manual, unskilled, skilled, technical, operation, clerical or supervisory work and, after considering the evidence in this regard, to record a finding whether the petitioner was a workman within the meaning of Section 2(s) of the Industrial Disputes Act and assign reasons in support thereof. Except for its ipsi dixit that the petitioner was not a workman, within the meaning of Section 2(s) of the Industrial Disputes Act, the Tribunal has failed to assign reasons as to how, the evidence on record, justified its conclusions that the petitioner was or was not a workman within the meaning of Section 2(s) of the Industrial Disputes Act.

Smt. A. Anasuya, learned Counsel for the respondent, would contend that while the award of the Industrial Tribunal did not explicitly, and in detail, assign reasons in justification of its conclusion that the petitioner was not a workman within the meaning of Section 2(s) of the Industrial Disputes Act, a reading of the award in its entirety would, however, necessitate an irresistible conclusion to be drawn that the petitioner was not a workman within the meaning of Section 2(s) of the Industrial Disputes Act. Learned Counsel would submit that the Constitution Bench judgment in **Sandoz (India) Ltd**[2] was followed by the Supreme Court in **Mukesh K. Tripathi Vs. Senior Divisional Manager, LIC**[3] and **Sonepat Cooperative Sugar Mills Ltd Vs. Ajit Singh**[4]. Learned Counsel would further contend that, since the

Tribunal had rightly come to the conclusion that the petitioner was not a workman within the meaning of Section 2(s) of the Industrial Disputes Act, it did not have the jurisdiction to adjudicate the dispute on merits and direct payment of compensation of three years salary to the petitioner on the ground that the respondents had lost confidence in him.

Sri A.K. Jayaprakash Rao, learned Counsel for the petitioner-workman, on the other hand, would contend that, since the Tribunal had not assigned any reasons in support of its conclusion that the petitioner was not a workman within the meaning of Section 2(s) of the Industrial Disputes Act, the award was liable to be quashed and the matter remanded to the Tribunal to decide this question afresh, on the basis of the evidence on record and, thereafter, pass an award in accordance with law.

In **Mukesh K. Tripathi**[3], an apprentice development officer approached the Industrial Tribunal. No evidence was adduced by the apprentice development officer to prove that he was a workman. The Supreme Court held that, since the apprentice development officer had not adduced any evidence that he performed any skilled or unskilled, manual, technical or operational duties required to come within the definition of Section 2(s) of the Industrial Disputes Act, the apprentice Development Officer could not be held to be a workman and that the order of the Allahabad High Court, in allowing the writ petition and in setting aside the award, was in order. Unlike in **Mukesh K. Tripathi**[3], in the present case the petitioner has adduced evidence, examining himself as WW-1 and marking Exs.W-1 to W9 as exhibits. On

behalf of the respondents, M.Ws-1 to 5 were examined and Exs.M-1 to M-44 were marked. Evidence was let in before the Tribunal, both by the petitioner and the respondents, in support of their respective pleas that the petitioner was/was not a workman under Section 2(s) of the Industrial Disputes Act.

In **Ajit Singh**[4], the question which arose for consideration was whether a legal assistant, employed by the Federation of Co-operation of Sugar Mills Limited, was a workman or not. The Supreme Court held that the issue, whether an employee answered the description of a workman or not, had to be determined on the basis of conclusive evidence and that the jurisdiction of the Industrial Court to make an award in the dispute would depend upon a finding as to whether the employee concerned was a workman or not and when such an issue was raised, the same being a jurisdictional one, the findings of the labour Court would be subject to judicial review. In the case on hand, the Tribunal has failed to analyse and examine the evidence on record and to assign reasons in support of its conclusion that the petitioner was not a workman within the meaning of Section 2(s) of the Industrial Disputes Act. The conclusion of the Tribunal, more so when it related to a jurisdictional issue as to whether or not the petitioner was a workman within the meaning of Section 2(s) of the Industrial Disputes Act, must be based on reasons and since the award of the Industrial Tribunal is bereft of reasons, in support of its conclusion that the petitioner was not a workman within the meaning of Section 2(s) of the Industrial Disputes Act, the award must necessarily be quashed.

There is substantial force in the contention of Smt. A. Anasuya, learned Counsel for the respondent company, that the Industrial Tribunal, having held that the petitioner was not a workman within the meaning of Section 2(s) of the Industrial Disputes Act and that the reference itself was not maintainable, had exceeded its jurisdiction in directing payment of compensation, of salary for three years, for loss of confidence. Once the Tribunal held that the petitioner was not a workman, within the meaning of Section 2(s) of the Industrial Disputes Act it had no jurisdiction, thereafter, to examine the merits of the dispute and direct payment of compensation. Since, however, the award is being quashed on the ground that the Tribunal has failed to assign reasons, in support of its conclusion that the petitioner is not a workman within the meaning of Section 2(s) of the Industrial Disputes Act, this question becomes academic.

The award is accordingly quashed and the matter remanded back to the Tribunal for its consideration afresh, on the basis of the evidence already adduced before it, to determine the question whether the petitioner is/is not a workman within the meaning of Section 2(s) of the Industrial Disputes Act and, thereafter, pass an award in accordance with law. As the dispute relates to the year 1993, and since more than 14 years has elapsed since then, it is necessary that the Tribunal decides this dispute expeditiously, in any event not later than four months from the date of receipt of a copy of this order.

Both the writ petitions are disposed of accordingly. No costs.

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Date: 23.04.2007 RAMESH RANGANATHAN, J

MRKR

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[1] 1983 SCC L&S 510

[2] AIR 1984 SC 2608

[3] (2004) 8 SCC 387

[4] (2005) 3 SCC 232